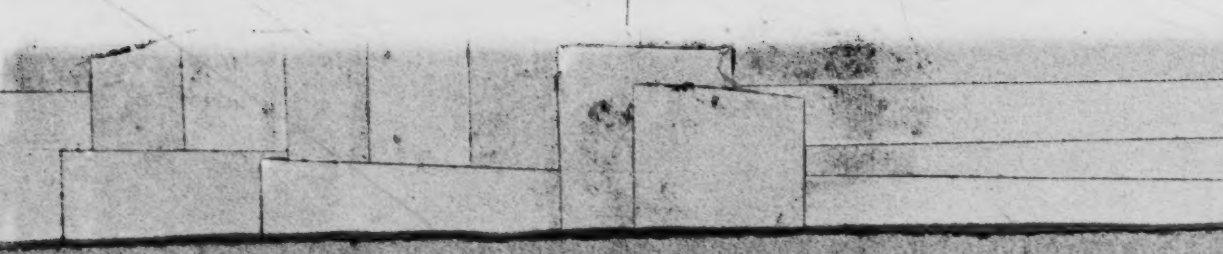

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In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1598

JAMES D. HODGSON, SECRETARY OF LABOR, PETITIONER

v.

ARNHEIM AND NEELY, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 444 F.2d 609. The opinion of the district court (Pet. App. D) is reported at 324 F. Supp. 987.

JURISDICTION

The judgment of the court of appeals was entered on June 15, 1971 (Pet. App. C). A timely petition for rehearing en banc was denied on February 9, 1972 (Pet. App. B). The petition for a writ of certiorari was filed on June 8, 1972, pursuant to an extension

granted by Mr. Justice Brennan, and the petition was granted on October 10, 1972. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether all the buildings management activities of a real estate management firm, performed for different owners, should be considered part of a single "enterprise," within the meaning of Section 3(r) of the Fair Labor Standards Act, for the purpose of determining whether the firm's gross volume of sales made or business done is sufficient that its operations are subject to, and its employees entitled to the protection of, the minimum wage and maximum hours provisions of the Act.

STATUTES INVOLVED

Sections 3(r) and 3(s)(1) of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 203(r), 203(s)(1), read in pertinent part as follows:

> (r) "Enterprise" means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor: *Provided*, That, within the meaning of this subsection, a retail or service establishment which is under independent ownership shall not be deemed to be so

operated or controlled as to be other than a separate and distinct enterprise by reason of any arrangement, which includes, but is not necessarily limited to, an agreement, (1) that it will sell, or sell only, certain goods specified by a particular manufacturer, distributor, or advertiser, or (2) that it will join with other such establishments in the same industry for the purpose of collective purchasing, or (3) that it will have the exclusive right to sell the goods or use the brand name of a manufacturer, distributor, or advertiser within a specified area, or by reason of the fact it occupies premises leased to it by a person who also leases premises to other retail or service establishments. * * *

* * * * * *

(s) "Enterprise engaged in commerce or in the production of goods for commerce" means an enterprise which has employees engaged in commerce or in the production of goods for commerce, including employees handling, selling, or otherwise working on goods that have been moved in or produced for commerce by any person, and which—

(1) during the period February 1, 1967, through January 31, 1969, is an enterprise whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level which are separately stated) or is a gasoline service establishment whose annual gross volume of sales is not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated), and beginning February 1, 1969, is an enterprise whose annual gross volume of sales made

or business done is not less than $250,000 (exclusive of excise taxes at the retail level which are separately stated) * * *.

STATEMENT

The Secretary of Labor brought this suit to enjoin Arnheim and Neely, Inc. (hereinafter "respondent") from violating the minimum wage, overtime and recordkeeping provisions of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 *et seq.*, and from continuing to withhold wages due to its building maintenance and janitorial employees. Respondent admitted that it did not pay the wages or keep the records required by the Act, but claimed that it was not an "employer" of the maintenance workers and, further, that it was not subject to the Act's requirements since it did not meet the "enterprise" coverage test of Section 3(s)(1), 29 U.S.C. 203(s)(1).

Respondent is a real estate firm that manages eight office buildings and one apartment complex in the greater Pittsburgh area, each of which has a different owner (App. 20–22). These management activities are carried out under contracts with the building owners delegating to respondent all the functions required for leasing, operating, and maintaining the buildings, including the following: obtaining tenants; negotiating, executing, and enforcing leases; collecting rents; arranging for the provision of utilities and other services; purchasing supplies; cleaning, repairing, decorating, and altering the premises; and paying all expenses of operation (App. 22, 26–27, 43–46).

Respondent conducts these building management activities from a central office, under the direction of several "staff managers" who are each assigned "managerial responsibility for one or more of the [nine] buildings" (App. 27–30), and who are assisted by clerical and staff personnel. In addition to these employees, respondent hires, discharges, and supervises all the labor required to operate and maintain the managed buildings, including superintendents, assistant superintendents, cleaning ladies, custodial workers, watchmen, elevator operators, and engineers (App. 27, 34–41, 50–51). As the parties stipulated, the functions and responsibilities of respondent with respect to these building employees are as follows (App. 27–29):

> In the management and maintenance of the managed properties, Arnheim and Neely, Inc., at all times acting pursuant to their contracts with the building owners, engages in the following:
>
> (a) Arnheim and Neely, Inc. hires all labor and employees required for the operation and maintenance of the managed premises. The hiring and pay of the building superintendents are occasionally subject to approval of the building owners.
>
> (b) Arnheim and Neely, Inc. discharges all labor and employees required for the operation and maintenance of the managed premises.
>
> (c) Arnheim and Neely, Inc. supervises all labor and employees required for the operation and maintenance of the managed premises.
>
> (d) Arnheim and Neely, Inc. provides a managerial person (separate and apart from

the building superintendent) in regard to most, if not all of the managed properties.

(e) Arnheim and Neely, Inc. schedules the hours to be worked by all persons engaged at the managed properties.

(f) Arnheim and Neely, Inc. determines the rates of pay of all employees engaged at the managed properties, subject to approval of building owners without exception. See Exhibit 8.

(g) Arnheim and Neely, Inc. determines the method of payment of all persons engaged at the managed properties, subject to union agreement, if any.

(h) Arnheim and Neely, Inc. establishes fringe benefits for all persons engaged at the managed properties, subject to owner's approval.

(i) Arnheim and Neely, Inc. negotiates union contracts in regard to those persons engaged at the managed properties who are union members. Exhibit 9 attached is typical of such contracts.

(j) Arnheim and Neely, Inc. prepares the payroll for all persons engaged at the managed properties.

(k) All persons engaged at the managed properties are paid by means of Arnheim and Neely, Inc. checks, drawn on the appropriate owner's account.

(l) Persons on Arnheim and Neely, Inc.'s staff are assigned managerial responsibility for one or more of the particular buildings.

(m) Arnheim and Neely, Inc., through its staff manager or through the building superintendent, assigns the persons engaged at the buildings to the various required duties and supervises the performance thereof.

(n) Promotions or reductions in rank and increases or decreases in pay as to the persons engaged at the managed buildings are determined by Arnheim and Neely, Inc., subject to owner's approval.

(o) Arnheim and Neely, Inc. makes legal deductions, including Income Tax, Social Security, etc., from the pay checks of all persons engaged at the managed buildings.

(p) The "Contract for Management" (Exhibit 1) provides, with respect to the managed buildings, "that all employees shall be deemed the employees of the OWNER and not the AGENT."

The rents collected from the managed buildings, which total more than $1.9 million per year, are deposited into separate bank accounts maintained for each owner. Each account is used by respondent to pay all expenses incurred in operating the building, including the wages of the maintenance workers. After respondent has paid expenses and deducted its commissions, it remits the balance to the building owner (App. 21–24, 44).

The district court held that the janitorial and maintenance personnel employed at the buildings managed by respondent were covered by the Act after February

1, 1967, the effective date of certain amendments to Section 3(s) adopted by Congress in 1966.[1] The court held that respondent was an "employer" within the meaning of the Act (Pet. App. D, pp. 31–37) and that its building maintenance activities were "related" and performed under "common control" for "a common business purpose," so as to constitute a single "enterprise" within the meaning of Section 3(r) (Pet. App. D, pp. 39–42). It also held that the size of this enterprise (*i.e.*, its annual gross volume of sales made or business done) should be measured by the gross rents received from the buildings it managed and not, as respondent had contended, by respondent's commissions (Pet. App. D, pp. 37–39).

The court of appeals sustained the district court's rulings that respondent is an "employer" (Pet. App. A, pp. 16–18) and that the gross volume of sales made or business done should be measured by rents rather than commissions (Pet. App. A, pp. 18–19), but reversed the decision on the ground that each building constitutes a separate and distinct "enterprise" under Section 3(r) (Pet. App. A, pp. 19–23).

The court of appeals concluded that Section 3(s) embodies a legislative policy to avoid undesirable economic consequences to small or inefficient businesses

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[1] Prior to the 1966 amendments, the statute contained a considerably narrower definition of engagement in commerce. The district court concluded that the employees involved here were not engaged in commerce, and therefore not subject to the Act, prior to the effective date of those amendments. The court of appeals did not reach this issue, and we have not sought review of it by this Court.

[illegible] exempting them from minimum wage requirements. [illegible] respondent maintains a separate bank account for each owner and because application of the Act to the maintenance workers would impose an economic burden on the owners, the court held the "enterprise" definition inapplicable to respondent's operations with respect to the maintenance workers, and looked instead to the building owners. Since the evidence showed no "common business purpose" on the part of the owners, the court found no requirement that the gross rentals of each of the Company's [respondent's] principals be pooled together merely because each principal has employed the Company "as an agent" (Pet. App. A, p. 21). Since each building was, therefore, to be considered a separate "enterprise," the court remanded the case to the district court for findings on whether any particular building generated enough rent to come within the coverage of the Act.

INTRODUCTION AND SUMMARY

As this Court said of the Fair Labor Standards Act in *Powell* v. *U.S. Cartridge Co.*, 339 U.S. 497, 516, "[b]readth of coverage [is] vital to [the Act's] mission," which is "to eliminate, as rapidly as practicable, substandard labor conditions throughout the nation" (*id.* at 510). When originally enacted, however, the Act applied only to employees who were themselves engaged in commerce or in the production of goods for commerce. In 1961, Congress recognized that limitation of the Act to these two categories did not afford protection to millions of exploited wage

earners who, although employed by businesses having some employees engaged in covered activities, were not themselves so engaged. To correct this condition and otherwise strengthen the Act, Congress adopted the "enterprise" concept of coverage. See S. Rep. No. 145, 87th Cong., 1st Sess., pp. 2–7, 40–41; H. Rep. No. 75, 87th Cong., 1st Sess., pp. 2–3, 7; see also 107 Cong. Rec. 4587–4588, 5840–5843.

Under this concept, the Act's provisions are made applicable to *all* employees of an enterprise, regardless of whether they are themselves engaged in any covered activities, provided that the enterprise is within one of the categories enumerated in Section 3(s) of the Act and has at least *some* employees engaged in commerce, including employees engaged in handling goods that have moved in commerce. Cf. *Maryland* v. *Wirtz*, 392 U.S. 183, 186, 188–193. As defined in Section 3(r), the term "enterprise" is not restricted to the activities of a single employer or establishment, but includes all those activities which are "related" and which are "performed (either through unified operation or common control) * * * for a common business purpose," regardless of whether "such activities [are] performed in one or more establishments or by one or more corporate or other organizational units" (29 U.S.C. 203 (r)).

In the instant case, respondent is an employer of the building maintenance and janitorial personnel at the nine buildings it manages. Respondent is responsible for the hiring and firing of these employees, the negotiation of union contracts, the establishment of rates of pay and fringe benefits, and supervision and

direction of all other aspects of their employment, subject to approval of the building owners in certain limited particulars. The sole issue before this Court is whether respondent's building management business consists of nine separate "enterprises" (one for each building), as the court of appeals held, or a single "enterprise" within the statutory definition of that term, as the district court held.

Since respondent is in the business of managing properties for others and conducts this business in the same way in connection with each property, its activities are "related" and performed for a "common business purpose." Moreover, this business activity is conducted through "unified operation" and under "common control" of respondent's management. Thus, under the plain language of Section 3(r), respondent's overall building management activities constitute a single "enterprise." This conclusion is reinforced by the legislative history of the adoption of the enterprise concept. The fundamental error of the court of appeals lay in its refusal to consider respondent's activities and its insistence on defining the enterprise in terms of the relationship between the activities and interests of the building owners.

The effect of the court of appeals decision is to impose a narrow construction on the "enterprise" provision that denies the benefits of the Act to thousands of workers who are commonly required to put in long hours at low pay, in violation of the settled and salutary principle that coverage provisions under the Fair Labor Standards Act are to be broadly construed. *Powell* v. *U.S. Cartridge Co., supra; Mitchell* v. *Lub-*

lin, McGaughy & Assoc., 358 U.S. 207, 211; *Mitchell* v. *Vollmer & Co.*, 349 U.S. 427, 429. The Fourth Circuit in *Shultz* v. *Falk*, 439 F. 2d 340, certiorari denied *sub nom. Falk* v. *Hodgson*, 404 U.S. 827, in deciding the identical issue, properly rejected such a restricted reading of the Act.

ARGUMENT

RESPONDENT'S OVERALL BUILDING MANAGEMENT OPERATIONS CONSTITUTE AN "ENTERPRISE" AS THE TERM IS DEFINED IN THE ACT

An employee is entitled to the benefits of the minimum wage and maximum hours provisions of the Fair Labor Standards Act (29 U.S.C. 206(a) and 207(a)(1)) if he is, *inter alia*, "employed in an enterprise engaged in commerce or in the production of goods for commerce * * *." That phrase is defined in Section 3(s)(1) in terms of annual dollar volume of sales made or business done by an enterprise, and the term "enterprise" is, in turn, defined in Section 3(r). The issue here is whether respondent's "enterprise" had a sufficient annual dollar volume that the building maintenance and janitorial personnel employed at the nine buildings managed by respondent are entitled to the coverage and benefits of the Act. If all nine buildings are part of a single "enterprise," then the Act clearly applies;[1] if each is a separate "enterprise,"

[1] An "enterprise" was covered, by virtue of Section 3(s)(1), if its annual gross volume of sales made or business done exceeded $500,000 during the period between February 1, 1967, and January 31, 1969. Subsequent to that date, it has been covered if the annual amount exceeded $250,000. In the past, the nine buildings managed by respondent generated a combined annual rent of approximately $1.9 million (App. 21).

then these employees would be covered only if the particular building at which they are employed generates sufficient revenues to meet the dollar volume specification of Section 3(s)(1).

This action was brought against respondent, and not against the building owners on whose behalf respondent manages these properties. Respondent was properly found by both courts below to be an "employer" of the building maintenance and janitorial personnel within the meaning of Section 3(d) of the Act, 29 U.S.C. 203(d), and the correctness of that determination is not before the Court.* The sole issue is the definition of respondent's "enterprise."

A. THE STATUTORY DEFINITION OF ENTERPRISE COVERS RESPONDENT'S OVERALL BUILDING MANAGEMENT OPERATIONS

Section 3(r) defines "enterprise" as

> the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose * * *.

*No cross-petition for certiorari was filed challenging the determination that respondent is an employer of these employees, nor was this issue mentioned in the Brief in Opposition. A resolution of this issue favorable to respondent would have required a different disposition by the court of appeals—an outright reversal rather than a remand for determination of the revenues of individual buildings. Accordingly, the issue is not before this Court on the present certiorari petition. See *National Labor Relations Board* v. *Express Publishing Co.*, 312 U.S. 426, 430. The same is true with respect to the other issue resolved favorably to the government below—the correctness of measuring the annual gross volume of business done by total rentals rather than by the amount of respondent's commissions.

The determination whether respondent's overall building management business is a single "enterprise" thus depends upon the answers to three questions:

(1) Does the alleged "enterprise" consist of "related activities"?

(2) Are these "related activities" performed "either through unified operation or common control"?

(3) Are they performed by respondent "for a common business purpose"?

Under the facts of this case, an unqualified affirmative response must be given to each of these inquiries.

1. *Respondent's business consists of "related activities."*

Respondent's building management activities, like those involved in the conflicting decision in *Shultz* v. *Falk*, *supra*, "are substantially similar from project to project" (439 F. 2d at 346). Respondent manages each of the nine buildings under the same standard form contract (App. 22). Under this contract, respondent performs exactly the same services with respect to each of the nine buildings—obtaining tenants; negotiating, executing and enforcing leases; collecting rents; arranging for the provision of utilities and other services; purchasing supplies; cleaning, repairing, decorating and altering the premises; and paying all the expenses of the building's operation (App. 26–27). Most of these services are, moreover, performed from a single location by respondent's central office employees.

These activities, which respondent performs for each building owner, are "related" for purposes of

Section 3(r). Although the phrase "related activities" is not itself defined in the Act, the legislative reports accompanying the 1961 Fair Labor Standards Amendments state that "activities are 'related' when they are the same or similar" (S. Rep. No. 145, 87th Cong., 1st Sess., p. 41; H. Rep. No. 75, 87th Cong., 1st Sess., p. 8),[4] which describes the activities here.[5] The Congressional concept of "related" activities is further illuminated by the illustration in the Senate Report of what would constitute "businesses which are unrelated to each other. For example, if a single company owns several retail apparel stores and is also engaged in the lumbering business, the sales of the lumbering business would not be included in the annual dollar volume in determining whether the $1 million test under section 3(s)(1) has been met. The employees of the lumbering

[4] The reports note that activities "are also 'related' when they are auxiliary and service activities such as central office and warehousing activities and bookkeeping, auditing, purchasing, advertising, and other services * * * [or] when they are part of a vertical structure such as the manufacturing, warehousing, and retailing of a particular product or products under unified operation or common control * * *" (*ibid.*).

[5] A number of other courts of appeals have held that activities which are much less similar in nature to each other than those involved here are "related" within the meaning of Section 3(r), *e.g.*, banking activities and the operation of a general office building (*Wirtz* v. *Savannah Bank & Trust Company of Savannah*, 362 F. 2d 857 (C.A. 5); *Wirtz* v. *First National Bank and Trust Company*, 365 F. 2d 641 (C.A. 10)); life insurance and investment activities and the operation of a general office building (*Wirtz* v. *Columbian Mutual Life Insurance Company*, 380 F. 2d 903 (C.A. 6); and a wholesale grocery business and three retail grocery stores (*Wirtz* v. *Barnes Grocer Company*, 398 F. 2d 718 (C.A. 8)).

business would not be included in the 'enterprise' even if the $1 million test were met since they are not engaged in the 'related activities' of the retail stores." S. Rep. No. 145, *supra*, at p. 41. Manifestly, respondent's management activities at different buildings are not "unrelated" in this sense.

2. *Respondent's activities are performed "either through unified operation or common control."*

The fact that the building management activities are all performed through a single legal entity is alone sufficient to establish the requirement of "common control," *Wirtz* v. *Columbian Mutual Life Insurance Company*, 246 F. Supp. 198, 201 (W. D. Tenn.), affirmed, 380 F. 2d 903 (C.A. 6), without regard to the alternative test of "unified operation." But, in any event, that test too is met, since respondent admittedly directs its building management activities through a hierarchy terminating in its central office. Cf. *Shultz* v. *Falk*, *supra*, 439 F. 2d at 346. See also *Shultz* v. *Mack Farland & Sons Roofing Co.*, 413 F. 2d 1296, 1301 (C.A. 5).

3. *Respondent's building management activities have "a common business purpose."*

While the phrase "common business purpose" is not defined in the Act, the legislative history demonstrates that the emphasis was on the word "business," in order to exclude non-business activities from the impact of the broadened coverage achieved by the "enterprise" amendment. Both the Senate and the House Reports stated:[4]

[4] S. Rep. No. 145, *supra*, at p. 41; H. Rep. No. 75, *supra*, at p. 8.

> Eleemosynary, religious, or educational and similar activities of organizations which are not operated for profit are not included in the term "enterprise" as used in this bill. Such activities performed by nonprofit organizations are not activities performed for a common business purpose.

The management of office and apartment buildings by respondent, performed for profit, meets the "common business purpose" requirement of the enterprise definition.

Here, as the court of appeals recognized, respondent's building management activities were all directed toward its single business objective "of maintaining and managing real property" (Pet. App. A, p. 18). The fact that respondent conducts these activities as an agent, rather than as a building owner, does not change their character. That is the nature of respondent's business.

There is nothing in the legislative history of the Act's enterprise coverage provisions which indicates or even suggests that these provisions do not apply to agents. On the contrary, there are explicit statements in the legislative history that the new enterprise coverage provisions would "provide minimum wage and overtime protection * * * for * * * employees in such enterprises as * * * real estate * * *" (S. Rep. No. 145, *supra,* at p. 31; H. Rep. No. 75, *supra,* at p. 13). Real estate enterprises typically operate, as does the respondent, in an agency capacity.

Similarly, it is not material that respondent's employees work at nine different locations. The statutory

definition of "enterprise" expressly "includes all such [related] activities * * * whether performed in one or more establishments * * *." Each office building managed by respondent constitutes one of its "establishments," and since the management of each building constitutes a related part of respondent's business activities, its enterprise encompasses the employees at every building it manages. See H. Rep. No. 1366, 89th Cong., 2d Sess., p. 9; S. Rep. No. 1487, 89th Cong., 2d Sess., p. 7

B. THE COURT OF APPEALS ERRED IN LOOKING TO THE BUILDING OWNERS RATHER THAN TO RESPONDENT IN IDENTIFYING THE ENTERPRISE

Despite the clear applicability of the plain language of the "enterprise" definition, fortified by the legislative history of the adoption of that definition, to respondent's overall building management activities, the court below refused to find that such activities constituted a single enterprise. Instead, it held that coverage would depend on a finding that the buildings themselves, and their owners, were related in a common enterprise. The court thus treated the case as though it were a suit brought against the building owners. It ignored both its own determination that respondent is the employer of the employees at the buildings and the factors establishing respondent's business as a covered enterprise. The fallacy in the court's reasoning is highlighted by the following excerpt from the opinion of the Fourth Circuit in *Shultz* v. *Falk*, *supra*, in which the identical issue was resolved in favor of coverage of the building employees (439 F. 2d at 346):

> * * * It is *defendants'* activities at each building which must be held together by a common business purpose, not all the activities of all owners of apartment projects. All that the enterprise requirement entails is that the defendants maintain under "common control" or as a "unified operation" a set of "related activities" having a "common business purpose," and that their employees be employed as a part of this operation. The organization and operation of defendants' apartment management business satisfy these requirements. Defendants supervise the employees involved here through a hierarchy terminating in their central offices. The services provided are substantially similar from project to project, and have the common purpose of maintaining and operating apartment buildings. The building workers are employed in this enterprise, since they are under defendants' control and carry out its purposes. The fact that they are employed at separate buildings does not prevent their being part of the same enterprise for purposes of the Act * * * [emphasis in original].

The contrary view of the court below is apparently based on its belief that since respondent maintains *"separate bank accounts for each owner,"* it would be unfair, in determining the scope of respondent's enterprise, to pool the rents from the several buildings "merely because each principal has employed the Company as an agent" (Pet. App. A, pp. 20–21; emphasis in original). This conclusion is predicated upon the view that, in adopting a dollar volume test to differentiate between covered and non-covered en-

terprises, Congress sought to protect small or inefficient businesses from the adverse economic impact of the minimum wage provisions and to make coverage turn on "presumed economic capacity to pay a prescribed minimum wage" (*id.* at 20).

The difficulty with this reasoning is twofold. First, it ignores the fact that respondent's business is of sufficient size to come within the statutory test. Secondly, it reflects an unrealistic assessment of the economic impact of respondent's operations. Thus, the fact that respondent maintains separate bank accounts for each building owner does not reduce the magnitude of its total building management activities nor diminish their impact on commerce. As this Court pointed out in *Maryland* v. *Wirtz, supra,* it is this impact which justifies the extension of coverage on an enterprise basis. See S. Rep. No. 1487, 89th Cong., 2d Sess., pp. 7–8; see also *Shultz* v. *Falk, supra,* 439 F. 2d at 347; *Wirtz* v. *First National Bank and Trust Company,* 365 F. 2d 641, 643, 645 (C.A. 10); *Wirtz* v. *Allen Green & Associates, Inc.,* 379 F. 2d 198, 199–200 (C.A. 6).

Respondent purchases all supplies needed for the operation and maintenance of the eight office buildings and one apartment complex; negotiates all contracts for water, gas, and electricity; and hires, supervises and pays the numerous maintenance, rental and clerical employees required to maintain and operate the nine buildings. As a result, these activities will have the same "effect on the flow of men, money, and materials across state lines" (*Wirtz* v. *Allen Green &*

Associates, Inc., supra, 379 F. 2d at 200), whether respondent pays for them from a single bank account or from several separate accounts.

The court of appeals also relied upon an excerpt from the Senate Report which it interpreted as showing a congressional intent to exclude from coverage "separate businesses which use common service organizations" (Pet. App. A, p. 22). This reliance is misplaced. The passage quoted by the court is addressed to situations coming within the proviso to Section 3(r), which prevents the aggregation in a single enterprise of certain independent businesses, such as individual tenants in a shopping center, independently owned franchises, or independently owned and operated retail stores combining for the purpose of joint purchasing or joint advertising. These situations are far different from that presented in the instant case. In none of them does the exempted individual business (logically equivalent to the building owners) employ the shopping center, franchisor, or manufacturer (logically equivalent to respondent) for the purpose of operating its business and hiring, assigning, setting terms and conditions of employment, and paying its employees.[7] Respondent's operations do not fit within the proviso exceptions to which the quotation was addressed, nor do they raise the kinds of problems with which Congress was concerned in enacting the proviso.

[7] Indeed, the shopping center, franchisor, or manufacturer would not be considered an employer under the Act with respect to the individual business's employees, a vital distinction from the situation in the instant case.

Finally, the court below was concerned that a fin
ing of enterprise coverage would impose an unju
economic burden on the owners (*id.* at 23). But th
concern is unwarranted, since it overlooks the fact th
the owners are the beneficiaries of respondent's abili
to make bulk purchases of supplies, to offer t
services of experienced management personnel wh
also manage other buildings, to provide efficient ce
tralized billing and collection services, and otherwi
to operate the buildings more efficiently and at low
cost than would be possible if each building we
managed separately.

In short, the court of appeals has unwarranted
imposed a narrow construction of the Act's coverag
excluding thousands of workers who are common
required to put in long hours at low pay. This is co
trary to this Court's established policy favoring liber
construction of the Act so as to apply it "to t
furthest reaches consistent with congressional dire
tion." *Mitchell* v. *Lublin, McGaughy & Assoc.*, 3
U.S. 207, 211.

CONCLUSION

The judgment of the court of appeals should be reversed and the judgment of the district court reinstated.

Respectfully submitted.

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